

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's) GEN Docket No. 90-314
Rules to Establish New Personal)
Communications Services)

REPLY OF AMERITECH

DOCKET FILE COPY ORIGINAL

I. Introduction

Ameritech respectfully files this Reply to Comments on the ten pending Petitions For Further Reconsideration in the above-captioned matter. Several of the parties filing Comments in this matter haggled over the wisdom of the specific numerical thresholds embodied in the cellular attribution rules chosen by the Commission. This Reply recommends the adoption of a simple mechanism which fairly treats the competitive equity issues raised by the parties, as well as supporting the Commission's policy goals in this proceeding.

The mechanism proposed by Ameritech herein will permit the effective divestiture of cellular interests exceeding the established threshold levels before the holder of those interests bids at auction. Specifically, the Commission should affirmatively allow pre-auction divestiture to an interim independent trustee whose sole duty is to dispose of the excess interest as soon as practical after the holder actually secures a PCS license at auction. This approach will allow meaningful participation of cellular carriers in the

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timely deployment of PCS in the U.S., while at the same time removing any arguable incentives for incumbent cellular carriers to contribute less than their fullest efforts to support the Commission's goals of delivery of PCS services to customers in the shortest possible timeframe.

II. The Cellular Bar

To foster a more competitive wireless service marketplace¹, the Commission has elected to bar current cellular operators from acquiring interests in potentially-competing 30 MHz PCS licenses. The adopted exclusion criteria essentially limit a cellular operator to bidding on one of the 10 MHz licenses when:

- (1) ten or more percent of the PCS service area is within the CGSA served by the cellular operator, and
- (2) the operator holds 20 percent or more of the total equity, voting stock, or other controlling interest in the cellular license for the CGSA in question.²

Although the cellular bar provisions finally adopted by the Commission were the product of an extensive record, several parties have elected to continue the debate over specific numeric thresholds into this late stage of the proceeding. CTIA, for example, argues in its Petition For Further Reconsideration that the specific numbers chosen are "attempts at fine

¹ The Commission has repeatedly stated this basis for the cellular exclusion criteria. See, e.g., In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Notice Of Inquiry (released June 28, 1990), at 14 (¶ 27); Notice of Proposed Rule Making and Tentative Decision (released August 14, 1992), at 26-30 (¶ 63-70); Second Report and Order (adopted October 22, 1993), at 43-48 (¶ 97-111); Memorandum Opinion and Order (released June 13, 1994) ("M O & O"), at 41-50 (¶ 98-122).

² 47 CFR § 24.204 (a), (c) & (d).

tuning, which stand to retard PCS development if the unavoidable guesses that underlie them do not bear out."³

Predictably, this mathematical gauntlet is taken up yet again by aspiring new entrants to the wireless marketplace. MCI argues that the "Commission's 20 % overlap limit is not arbitrary as CTIA contends ..."4, and states that each of several alternative figures would eliminate any "means of ascertaining whether the cellular incumbent's bid was sincere, or part of an attempt to game the system."⁵ Similarly, APC paints a picture of black-hearted cellular operators who recommend different threshold numbers "for the sole purpose of preserving their duopoly profits and hindering competition"⁶, but contributes yet another study to the "battle of the experts" which has raged throughout this Docket for the past four years.⁷ Presumably, the instant Reply cycle will produce even further studies and even more numbers.

III. Post-Auction Divestiture To An Interim Trustee

Fortunately, a workable solution to these "calculator wars" is already embodied in the Commission's final rules. In response to several earlier Petitions For Reconsideration, the FCC elected to permit cellular operators (in limited circumstances) to participate fully in the PCS spectrum auctions by divesting their interests exceeding the cellular bar within 90 days after

³ Petition For Further Reconsideration of CTIA, at 2.

⁴ Comments of MCI, at 2. These Comments were filed even before MCI's announcement of the demise of its long-touted alliance with Nextel.

⁵ Ibid.

⁶ Comments of American Personal Communications, at 2.

⁷ Ibid., at 6-7.

obtaining a 30 MHz license.⁸ However, this post-auction divestiture right, as adopted, was specifically limited to cellular operators that serve less than 20 percent of the PCS license area involved.⁹

While the "post-auction divestiture" provision as implemented is not currently available to all cellular operators, this provision does introduce a concept that may be of use to the Commission in this context. Recognizing that the winner of a PCS license at auction may be disadvantaged by the "forced sale" situation created by the rules, the FCC elected to allow a qualifying cellular operator to meet the 90-day divestiture requirement by conveying the prohibited cellular interest to an "interim independent trustee" if a buyer cannot be secured in the required timeframe. Such a conveyance is permitted "as long as the applicant has no interest in or control of the trustee, and the trustee may dispose of the license as it sees fit".¹⁰

This "interim independent trustee" construct should be made available by extension to all cellular operators on a pre-auction basis. Specifically, a cellular operator which does not happen to qualify for the current post-auction divestiture provision -- due to a cellular/PCS population overlap exceeding 10 percent -- which certifies, in its pre-auction application (the so-called "short form" application), that it had conveyed its interests exceeding the auction's 20 percent bar to an interim independent trustee, would meet the spirit and the intent of the Commission's rules as already adopted on a limited basis. A party so certifying should be permitted to bid for the 30 MHz blocks.

⁸ MO & O, at 57-9 (¶ 141-146).

⁹ Ibid.; see also 47 CFR §24.204(f).

¹⁰ 47 CFR §24.204(f)(3)(i).

To deal with concerns regarding potential abuse by unscrupulous operators who might enter into sham interim trustee agreements only to drive up the bidding before dropping out, the Commission may choose to limit the availability of this device. For example, conveyance to an interim trustee could be permitted only once per cellular carrier, for one PCS license auction only). Similarly, the trust could be limited to a small number of the certifying carrier's total cellular service base (e.g., up to 1,000,000 "equity pops", or the carrier's total equity holdings multiplied by the number of pops included in the cellular service area).

Under this scenario, the Commission will still maintain control over the auction process. It would still maintain its audit capabilities,¹¹ and will likewise continue to hold the power to levy substantial penalties for attempts to "game the process".

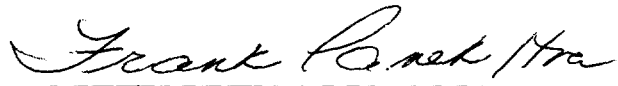
In addition to permitting more meaningful participation of cellular carriers in the U.S. rollout of PCS, the implementation of these measures will eliminate the potential of penalizing current cellular operators which, by virtue of their participation in Commission-encouraged settlements in the initial phase of cellular service, might be excluded from full participation in the PCS marketplace.

¹¹ Second Report & Order, at 47-8 (¶¶ 109-110).

IV. Conclusion

This ready solution to the Commission's problem should be adopted and implemented as soon as possible to permit timely implementation before the first round of broadband auctions later this calendar year.

Respectfully submitted,

A handwritten signature in cursive script, reading "Frank M. Panek". The signature is written in dark ink and is positioned above a horizontal line.

Frank M. Panek
Attorney for Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(708) 248-6064

Dated September 14, 1994

CERTIFICATE OF SERVICE

I, Kimberly M. Gurrieri, do hereby certify that a copy of the foregoing pleading has been served on all parties by first class mail, postage prepaid, on this 14th day of September 1994.

Kimberly Gurrieri
Kimberly M. Gurrieri